

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ILLUMINA, INC.,

Case No. 09-cv-277

Plaintiff,

v.

AFFYMETRIX, INC.

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Illumina, Inc., for its complaint against Defendant Affymetrix, Inc.,
alleges as follows:

THE PARTIES

1. Plaintiff Illumina, Inc. (“Illumina”) is a Delaware corporation with its principal place of business at 9865 Towne Centre Drive, San Diego, California 92121.
2. On information and belief, Defendant Affymetrix, Inc. (“Affymetrix”) is a Delaware corporation with its principal place of business at 3420 Central Expressway, Santa Clara, California 95051.

JURISDICTION

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Affymetrix because Affymetrix conducts substantial business in Wisconsin and this District and is committing infringing acts in Wisconsin and this District.

5. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b) because Affymetrix is a corporation that resides within the District. On information and belief, Affymetrix sells and offers to sell infringing products to customers in this District and induces direct infringements in this District.

FACTS GIVING RISE TO THIS ACTION

6. Paragraphs 1 - 5 are incorporated by reference as if set forth here in full.

7. Illumina brings this action to seek damages and injunctive relief arising out of Affymetrix's infringement of Illumina's U.S. Patent No. 7,510,841 ("the '841 patent").

8. On information and belief, Affymetrix has made, used, sold, and/or offered for sale products covered by and/or performing the methods recited in one or more claims of the '841 patent, including (but not limited to) the GeneChip® HT RG-230 PM Array Plate.

9. On information and belief, Affymetrix is actively inducing and/or contributing to the infringement of the '841 patent by others through Affymetrix's making, using, selling, and offering to sell products including (but not limited to) the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Array Plate Scanner, the GeneChip® HT 3' IVT Express Kit, the GeneChip® Array Station, and the GeneTitan® Instrument.

COUNT I

Infringement of the '841 Patent

10. Paragraphs 1 - 9 are incorporated by reference as if set forth here in full.

11. United States Patent No. 7,510,841 issued on March 31, 2009. The '841 patent is entitled "Methods of Making and Using Composite Arrays for the Detection of a Plurality of Target Analytes." The named inventors are John Stuelpnagel, Mark Chee, and Steven Auger. The assignee of the '841 patent is Illumina, Inc. A copy of the '841 patent is attached as Exhibit A hereto.

12. On information and belief, Affymetrix's manufacture, use, sale and/or offer for sale of the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Array Plate Scanner, the GeneChip® HT 3' IVT Express Kit, the GeneChip® Array Station, and the GeneTitan® Instrument constitutes infringement of the '841 patent, either directly, indirectly, literally or under the doctrine of equivalents.

13. Affymetrix's activities violate one or more subsections of 35 U.S.C. § 271.

14. On information and belief, Affymetrix's infringement of the '841 patent has been willful and deliberate.

15. If Affymetrix's infringing activities are not enjoined, Illumina will suffer irreparable harm that cannot be adequately compensated by a monetary award.

16. Illumina has suffered economic harm as a result of Affymetrix's infringing activities in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE Plaintiff seeks the following relief from this Court:

A. That this Court adjudge and decree that Affymetrix has, directly and indirectly, infringed one or more claims of the '841 patent and that each of the claims of the '841 patent is valid and enforceable;

B. A permanent injunction enjoining Affymetrix and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for Affymetrix and on its behalf, or acting in concert with it directly or indirectly, from importing, making, using, selling, and/or offering to sell the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Array Plate Scanner, the GeneChip® HT 3' IVT Express Kit, the GeneChip® Array Station, the GeneTitan® Instrument or any other Affymetrix product that would directly or indirectly infringe any claims of the '841 patent.

C. An award of damages, together with interest, to Illumina in an amount adequate to compensate Illumina for Affymetrix's infringement of the '841 patent, as provided in 35 U.S.C. § 284;

D. An adjudication that Affymetrix has willfully infringed the '841 patent and increasing the award of damages to Illumina up to three times in view of Affymetrix's willful infringement;

E. A declaration that this is an exceptional case under 35 U.S.C. § 285 and that Illumina be awarded its attorneys' fees and costs incurred in prosecuting its claims as provided under 35 U.S.C. § 285 and Fed. R. Civ. P. 54(d); and

F. Such other relief as this Court deems proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues properly tried to a jury.

Dated this 4th day of May 2009.

s/ Justin E. Gray

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